

## **Section 8.070 STORMWATER MANAGEMENT**

### **8.070.010 Definitions**

The following definitions describe the meaning of the terms used in this by-law:

*Adverse Impact:* Harmful effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses which are or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity, or stability or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

*Best Management Practices (BMP):* Structural or biological devices that temporarily store or treat stormwater runoff to reduce flooding, remove pollutants, and provide other amenities. They can also be nonstructural practices that reduce pollutants at their source. Examples of BMPs are described in the Massachusetts Department of Environmental Protection's (MassDEP) stormwater design manual: Stormwater Management Handbook, Volume 2: Chapter 2: Structural BMP Specifications for the Massachusetts Stormwater Handbook (February 2008, MassDEP, as updated or amended).

*Board of Public Works:* The permitting and enforcement agency.

*Construction Activity:* Disturbance of the ground by removal of surface cover, grading, excavation, clearing or filling.

*Detention:* The temporary storage of storm runoff in a BMP, which is used to control the "peak discharge" rates, and which provides gravity settling of pollutants.

*Discharge of Pollutants:* The addition of a pollutant or combination of pollutants into a Municipal Separate Storm Sewer System (MS4) or into the waters of the Commonwealth from any source.

*Groundwater:* Water beneath the surface of the ground.

*Illicit Discharge:* Direct or indirect non-stormwater discharge to an MS4, except as specifically exempted in Illicit Stormwater Section 8.07.100. (D). The term does not include a discharge in compliance with a National Pollutant Discharge and Elimination System (NPDES) stormwater discharge permit or resulting from fire fighting or other municipal activities, not including Construction Activities.

*Illicit Connection:* Surface or subsurface drain or conveyance, which allows an illicit discharge into an MS4. Illicit connections include conveyances which allow a non-stormwater discharge to an MS4 including sewage, process wastewater or wash water and connections from indoor drains, sinks or toilets, regardless of whether said connection was previously allowed, permitted or approved before the effective date of this by-law.

*Infiltration:* The downward movement of water from the surface to the subsoil.

*Municipal Separate Storm Sewer System (MS4):* The system of conveyances designed or used for collecting or conveying stormwater, including road or street with a drainage system, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, drain channel, reservoir, and other drainage owned or operated by the Town of East Longmeadow.

*National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit:* A permit issued by the United States Environmental Protection Agency or jointly with the state that authorizes the discharge of pollutants to waters of the United States.

*Non-Stormwater Discharges:* Discharge to the MS4 not composed entirely of stormwater.

*Peak Discharge:* The maximum rate of flow during a storm.

*Permeable soils:* Soil materials with a sufficiently rapid infiltration rate so as to greatly reduce or eliminate surface and stormwater runoff.

*Person:* An individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, administrative agency, public or quasi-public entity, the commonwealth or political subdivision thereof or the federal government, to the extent permitted by law and an officer, employee or agent of such person.

*Pollutant:* Any element or property of sewage, agricultural, industrial, commercial or residential waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is introduced into the MS4 or waters of the Commonwealth. Pollutants shall include, but not be limited to: dredged spoil, solid waste, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, hot fluids, wrecked or discarded equipment, rock, sand, and industrial, municipal, agricultural and residential waste discharged into water.

*Retention:* The holding of runoff in a basin without release except by means of evaporation, infiltration, or emergency bypass.

*Runoff:* Rainfall, snowmelt, or irrigation water flowing over the ground surface.

*Stormwater:* Runoff from precipitation or snow melt.

*Stormwater Management Facility:* A structural stormwater management measure, including stormwater management basins and filtration or other treatment systems.

*Uncontaminated Water:* Water containing no pollutants.

*Uncontaminated Groundwater:* Groundwater containing no pollutants.

*Waters of the Commonwealth:* All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters and groundwater.

*Wastewater:* Sanitary waste or sludge and water used during manufacturing, cleaning or processing of materials that enters the MS4 or waters of the Commonwealth.

#### **8.070.020 Purpose**

(A) The purpose of this section is to better manage land development in order to protect, maintain, and enhance the public health, safety, and general welfare of the citizens of East Longmeadow by establishing minimum requirements and procedures to control the adverse impacts associated with stormwater runoff.

#### **8.070.030 Authority**

The Board of Public Works or its designee shall administer, enforce and implement this section. The Board of Public Works shall promulgate rules, regulations and a permitting process to effectuate the purposes of this section. Failure by the Board of Public Works to promulgate such rules and regulations shall not have the effect of suspending or invalidating this section.

#### **8.070.040 Applicability**

(A) *Applicability.* This by-law shall apply to activities that result in disturbance of one or more acres (43,560+ square feet) of land. In determining whether an activity is subject to jurisdiction under this by-law, the Board of Public Works or its designee and applicant shall consider the entirety of the project, including any likely future expansion, and not separate phases or segments thereof. The applicant shall not phase or segment a project to evade, defer or curtail review under this by-law. Except as authorized by the Board of Public Works

or its designee, no person shall perform an activity that results in disturbance of one or more acres of land.

(B) *Exemptions.* The following uses and activities are exempt from compliance with this by-law:

1. Stormwater discharges resulting from land disturbance activities that are subject to an Order of Conditions issued by the Conservation Commission under the Wetlands Protection Act;
2. An agricultural activity which is in compliance with an approved soil conservation plan prepared or approved by the United States Natural Resource Conservation Service;
3. Logging which is in compliance with a timber management plan approved under the Forest Cutting Practices Act by Massachusetts Department of Conservation and Recreation;
4. Activities that do not disturb more than one acre (43,560 square feet) of land;
5. Construction of municipal utilities;
6. In-kind repairs to a stormwater treatment system deemed necessary by the East Longmeadow Board of Public Works; and
7. An emergency activity that is immediately necessary for the protection of life, property or the environment, as determined by the Board of Public Works.

(C) *Waivers.* The Board of Public Works may waive strict compliance with any requirement of this by-law or the rules and regulations promulgated hereunder upon written findings of fact setting forth the basis for the waiver by the Board of Public Works.

#### **8.070.050 Permit Requirements**

(A) *Permit required.* Prior to the approval of a Special Permit, Site Plan or waiver thereof or Building Permit for an activity regulated hereunder, a Stormwater Management Permit must be approved by the Board of Public Works or its designee.

(B) *Permit fees.* For Stormwater Management Permit fee shall be based on the amount of land to be disturbed at the site and the fee structure shall be established by the Board of Public Works by regulation. If, in the judgment of the Board of Public Works, or its designee consulting services are necessary or appropriate, the applicant shall, prior to a determination on an application, deposit with the Town, an amount determined by the Board of Public Works or its designee to be sufficient to cover the full costs of such services. All such consultants shall be selected by the Board of Public Works or its designee and paid out of said deposit. The Town will reimburse the applicant for any credits remaining after a consultant has been paid within thirty (30) days of said payment. In the event the deposit is insufficient to cover consultant services, the outstanding balance is to be paid by the applicant within 30 days of receipt of invoice for the outstanding balance.

(C) *Stormwater and erosion control plan.* The application for a stormwater management permit shall consist of submittal of a stormwater management and erosion control plan prepared in accordance with the rules and regulations.

(D) *Stormwater Management Performance Standards.* Projects that require a permit under this by-law must meet the Massachusetts Stormwater Management Standards.

#### **8.070.060 Performance Bond**

The Board of Public Works shall require from the developer a cash bond prior to the submittal of a building permit application for the construction of a development requiring a stormwater management facility. The amount of the security shall not be less than the total estimated construction cost of the stormwater management facility including the applicable

prevailing wage cost for the project. The bond shall be forfeited for failure to complete work specified in the approved stormwater management permit, compliance with all of the provisions of this by-law and other applicable laws and rules and regulations, and any time limitations. No portion of the bond shall be released without an inspection of the work by the Board of Public Works or its designee. The bond shall not be fully released without submission to the Board of Public Works or its designee of acceptable "as-built" plans and certification of completion that the stormwater management facilities are in compliance with the permit and plans approved thereunder.

**8.070.070 Certificate of Completion**

The Board of Public Works or its designee shall issue a letter certifying completion upon receipt and approval of the final inspection reports, final plans, including evidence of recording of permanent easements, and/or upon otherwise determining that all work of the permit has been satisfactorily completed in conformance with this by-law.

**8.070.080 Illicit Discharges Purpose**

The purpose of this portion of the by-law is to regulate illicit connections and discharges to the MS4,, to protect East Longmeadow's water bodies and groundwater, and to safeguard the public health, safety, welfare and the environment, by:

- (a) preventing pollutants from entering East Longmeadow's MS4;
- (b) prohibiting illicit connections and unauthorized discharges to the MS4;
- (c) requiring the removal of all such illicit connections;
- (d) establishing the legal authority to ensure compliance with the provisions of this by-law through inspection, monitoring, and enforcement.

**8.070.090 Illicit Discharges Applicability**

This section shall apply to flows entering the MS4.

**8.070.100 Illicit Discharges Prohibited Activities**

(A) *Illicit discharges.* No person shall dump, discharge, cause or allow to be discharged a pollutant or non-stormwater discharge into MS4s or into waters of the Commonwealth.

(B) *Illicit connections.* No person shall construct, use, allow, maintain or continue an illicit connection to an MS4, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

(C) *Obstruction of storm drain systems.* No person shall obstruct or interfere with the normal flow of stormwater into or out of an MS4 without prior approval from the Board of Public Works or its designee.

(D) *Exemptions.* This section shall not apply to the following non-stormwater discharges or flows provided that the source is not a significant contributor of a pollutant to MS4s:

- 1. waterline flushing;
- 2. flow from potable water sources;
- 3. springs;
- 4. natural flow from riparian habitats and wetlands;
- 5. diverted stream flow;
- 6. rising groundwater;
- 7. uncontaminated groundwater infiltrating (entering the MS4 from the ground through such means as defective pipes, pipe joints, connections, or manholes), or uncontaminated pumped groundwater;

8. water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), sump pumps, or air conditioning condensation;
9. discharge from landscape irrigation or lawn watering;
10. water from individual residential car washing;
11. discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
12. discharge from street sweeping;
13. discharge or flow resulting from ice and snow control operations
14. dye testing, provided verbal notification is given to the Board of Public Works or its designee prior to the time of the test;
15. discharge or flow resulting from fire fighting activities
16. non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations;
17. discharge for which advanced written approval is received from the Board of Public Works or its designee as necessary to protect public health, safety, welfare, and the environment; and
18. incidental discharge (e.g., dust, drops of fluids) from maintenance and normal activities related to allowed uses, which results in de minimus levels of pollution entering the MS4 or Waters of the Commonwealth in East Longmeadow. This by-law does not supersede any other local, state or federal requirements.

#### **8.070.110 Notification of Spills**

Notwithstanding any other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of a known or suspected release of materials at that facility operation which is resulting or may result in illicit discharge of pollutants that person shall take the necessary steps to ensure containment, and cleanup of the release. In the event of a release enters the MS4 or Waters of the Commonwealth in East Longmeadow, the person shall immediately notify the East Longmeadow Board of Public Works. Written confirmation of telephone, facsimile or in-person notifications shall be provided to the Board of Public Works or its designee within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained by said facility owner or operator for at least three years.

#### **8.070.120 Enforcement**

Any officer, employee, person or entity observing or having actual knowledge of a violation of this by-law or a rule or regulation adopted hereunder that he is responsible for enforcing may, as an alternative to seeking a criminal penalty for violation of this by-law, give the offender a ticket in a form in compliance with the requirements of and in the manner established in G.L. c. 40, §21D and Section 8.130 of the East Longmeadow General By-laws. The Board of Public Works shall designate the person or persons responsible for enforcement.

The Penalty for each violation of this stormwater management portion of the by-law and the rules and regulations adopted hereunder shall be \$200.00 and each day or part thereof shall constitute a separate violation.

The Board of Public Works, in addition to issuing said tickets, may enforce the provisions of this by-law by injunctive relief if it determines that the health, safety or welfare of any resident or member of the public or that the well being of the community is or will be endangered by the violation(s).

Any permit issued pursuant to this by-law shall contain language requiring the applicant to pay any and all costs, including attorney fees and expert witness fees, incurred by the town in seeking court action regarding the enforcement of this by-law and the rules and regulations adopted hereunder.

The prior provisions of this by-law notwithstanding, the Board of Public Works or its designee may enter onto a person's land to inspect any work performed under a permit issued pursuant to this by-law. The Board of Public Works may also enter any property to determine if such property is in violation of this by-law or rules and regulations if it has a good faith basis to believe an activity requiring a permit is being performed on the property without such a permit.

The Board of Public Works may, for cause shown, suspend or terminate a person's connection to the MS4 and any permit issued pursuant to this by-law.

Notice of the intent to suspend or terminate a person's connection to the MS4 or a permit shall be given in writing to the owner of the property and the permit holder, if different, by delivering, to the owner to the address listed for taxation purposes in the Assessor's Office, and the permit holder at the address listed in the application; a copy of the notice of hearing shall be delivered at least ten (10) business days before said hearing date and shall, in addition, be mailed by 1<sup>st</sup> class mail, postage prepaid at least fourteen (14) days before said hearing.

**Comment [TJA1]:** Language from Town Counsel

The notice shall contain the:

1. Name and address of the owner of the property;
2. The name and address of the permit holder if different than the owner;
3. The action contemplated;
4. Statement of violations believed to exist; and
5. A statement that the owner and permit holder may present evidence regarding alleged violations.

If the Board of Public Works or its designee determines in writing that the public health, safety or welfare requires immediate action, it may suspend or terminate MS4 service and any permit immediately. However, in such a case, notice as set forth above, shall be delivered and mailed to the owner and permit holder, if different, informing them that they have fifteen (15) days from the date of the suspension or termination to appeal said action of the Board of Public Works.

#### **8.070.130 Transitional Provisions**

Property owners shall comply with the illicit discharges sections of this by-law, but such property owners shall in no case have more than six months from the effective date of the by-law to comply with its provisions, unless good cause is shown for the failure to comply with the by-law during that period.